
STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION



CONTRACT FOR PURCHASE OF SERVICES

FY2008 thru FY2010 Microfilming Services
ICC08RT001

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

TABLE OF CONTENTS

CONTRACT FOR PURCHASE OF SERVICES

1. DEFINITIONS	1
2. AGENCY/BUYER AND VENDOR CONTACT PAGE	3
3. SERVICES REQUIRED FROM THE VENDOR.....	4
4. CONTRACT PRICING	6
5. TERMS AND CONDITIONS.....	8
6. AGENCY/BUYER SUPPLEMENTAL TERMS AND CONDITIONS	29
7. STATE FORMS REQUIRED OF THE VENDOR.....	30
8. SIGNATURE PAGE: CONTRACT FOR PURCHASE OF SERVICES.....	31

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

CONTRACT FOR PURCHASE OF SERVICES

The following pages, including any attachments or amendments, will constitute the binding and enforceable Contract between the Agency/Buyer and the Vendor based upon any negotiations. The Contract is arranged as follows:

1. **DEFINITIONS**
2. **AGENCY/BUYER AND VENDOR CONTACT PAGE:** This section provides for the Agency/Buyer and Vendor to specify contact people for the Contract.
3. **SERVICES REQUIRED FROM THE VENDOR:** The Agency/Buyer will detail the specific requirements and needs for which the Contract is to address.
4. **CONTRACT PRICING:** This section will detail pricing/compensation requirements with at least the following categories of information: (1) Method and Rate of Compensation, (2) Expenses, (3) Payment Terms and Conditions, (4) Discounts, (5) Tax Exemption.
5. **TERMS AND CONDITIONS:** This section contains the State's terms and conditions for this Contract.
6. **AGENCY/BUYER SUPPLEMENTAL TERMS AND CONDITIONS:** This section indicates whether or not any supplemental terms and conditions are attached and applicable to this Contract.
7. **STATE FORMS REQUIRED OF THE VENDOR:** This section includes all State Forms that are required to be included in the Contract.
8. **SIGNATURE PAGE: CONTRACT FOR SERVICES:** This section provides for the Agency/Buyer and Vendor to sign and execute the Contract.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

1. DEFINITIONS

Whenever used in this Contract, or amendment, including schedules and exhibits to this Contract, the following terms will have the meanings defined below.

- 1.1 Acceptance:** the point in time when the product or equipment has been fully installed and operates in compliance with the Agency/Buyer's order and the Contract, or the State otherwise indicates acceptance in writing.
- 1.2 Affiliates:** any person, firm, corporation (including, without limitation, service corporation and professional corporation), partnership (including, without limitation, general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, business trust, association or other entity that now or in the future directly or indirectly controls, is controlled by, or is under common control with Vendor.
- 1.3 Agency/Buyer:** the agency, board, department or commission of State government responsible for entering into the Contract, monitoring performance, receiving the benefits derived from the Contract and making payments under the Contract.
- 1.4 CMS:** the State of Illinois Department of Central Management Services and any successor organizations.
- 1.5 Code:** the Illinois Procurement Code, 30 ILCS 500/1-5 et seq. Unofficial versions of the Code and Standard Procurement Rules (44 Ill. Adm. Code 1), which are applicable to this procurement, may be viewed at <http://www.purchase.state.il.us/>.
- 1.6 Contract:** the "Contract for Purchase of Services."
- 1.7 Confidential Information:** any material, data, or information disclosed by either Party to the other that, pursuant to agreement of the parties or the State's grant of a proper request for confidentiality, is not generally known by or disclosed to the public or to Third Parties including, without limitation: (a) all materials, know-how, processes, trade secrets, manuals, confidential reports, services rendered by State, financial, technical and operational information, and other matters relating to the operation of a Party's business; (b) all information and materials relating to Third Party vendors of State that have provided any part of State's information or communications infrastructure to State; (c) software; and (d) any other information that the Parties agree should be kept confidential.
- 1.8 Filing:** where applicable, an instrument or document submitted to a regulatory body for review and approval to allow the Vendor(s) to make the Services contained therein available for consumption.
- 1.9 ILCS:** Illinois Compiled Statutes. An unofficial version of the ILCS can be viewed at <http://www.ilga.gov/legislation/ilcs/ilcs.asp>.
- 1.10 Order:** any written request from CMS or an Agency/Buyer for services and/or products and/or equipment pursuant to this Contract.
- 1.11 Parties:** the State of Illinois and the Vendor.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

- 1.12 Performance Guarantee:** the Vendor's commitment to place some or all of its fee at risk contingent upon the Agency/Buyer's satisfaction with the work to be performed.
- 1.13 State:** the State of Illinois, as represented through any agency, department, board, or commission.
- 1.14 Third Party:** any entity other than the Agency/Buyer, Vendor(s), or any of their respective Affiliates.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

2. AGENCY/BUYER AND VENDOR CONTACT PAGE

VENDOR		AGENCY/BUYER	
Name:	Char Fanning	Name:	Elizabeth A. Rolando
Title:	Chief Financial Officer	Title:	Chief Clerk's Office Project Manager
Address:	130 N. Sixteenth Street Springfield, IL 62703-1102	Address:	527 East Capitol Avenue Springfield, IL 62701
Phone:	(217) 525-6522	Phone:	(217) 782-7434
TDD:		TDD:	(217) 782-7434
Fax:	(217) 525-9017	Fax:	(217) 785-5231
E-mail:	charfanning@hotmail.com	E-mail:	erolando@icc.illinois.gov
Name:		Name:	Dave Lazarides
Title:		Title:	Transportation Division Project Manager
Address:		Address:	527 East Capitol Avenue Springfield, IL 62701
Phone:		Phone:	(217) 782-9228
TDD:		TDD:	(217) 524-4915
Fax:		Fax:	(217) 785-5231
E-mail:		E-mail:	dlazarides@icc.illinois.gov

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

3. SERVICES REQUIRED FROM THE VENDOR

The Agency/Buyer will detail the specific requirements and needs for which the Contract is to address. This section will include the Agency/Buyer's needs, goals and requirements as well as any other specifications. This information will constitute the terms of the Contract.

3.1 Need For Services

The Illinois Commerce Commission amasses thousands of pages of documents each year. These records result from hundreds of docketed (Public Utility and Transportation) cases, as well as from financial and personnel matters and in other areas within the Commission's jurisdiction. Where permitted by State law, the AGENCY microfilms these records to conserve scarce space.

3.2 Goals and Objectives

The AGENCY's goal is to establish a contract for on-site microfilming of various agency documents. Such services would be for the State's Fiscal Year (FY) 2008, FY 2009 and FY 2010 which begin and end, respectively, July 1, 2007 to June 30, 2008, July 1, 2008 to June 30, 2009, and July 1, 2009 to June 30, 2010.

3.3 Services Required This contract uses the term microfilming to identify requested services. While the term microfilming describes the technology AGENCY is currently using to preserve records and documents, for this contract the term microfilming is further defined to include other methods of document preservation, e.g. scanning documents into an electronic format, etc.

3.3.1 VENDOR will perform microfilming services for the Agency at 527 East Capitol Avenue, Springfield, IL 62701 for the Chief Clerk's Office and the Transportation Division during FY 2008, FY 2009, and FY 2010 as described herein.

3.3.2 VENDOR will prepare the documents for filming according to the method stipulated by, and under the general supervision of AGENCY staff.

3.3.3 VENDOR will be required to re-film illegible documents which resulted from improper camera loading, unloading, and/or microfilm operator error with no additional labor charge to the AGENCY.

3.3.4 VENDOR shall be responsible for all taxes, employment benefits, workers compensation, unemployment benefits, expenses and liabilities related to any temporary services employee provided by the VENDOR to the AGENCY under this CONTRACT.

3.4 Reporting, Status and Monitoring Specifications

AGENCY Project Managers for this project shall be Elizabeth A. Rolando (phone 217-782-7434) in the Clerk's Office and Dave Lazarides (phone 217-782-9228) in the Transportation Division or other person(s) so designated by the AGENCY. Project Managers are located at 527 East Capitol Avenue, Springfield, IL.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

3.4.1 Contract Monitoring

3.4.1.1 Vendor is responsible for the faithful performance of the contract and shall have internal monitoring procedures and processes to ensure compliance.

3.4.1.2 The State reserves the right to monitor and track Vendor's performance over the course of the contract including any warranty term. The information gathered may be used in administration of the contract including payment, and may be used when evaluating the vendor in future procurements.

3.4.1.3 In appropriate circumstances, the State and the Vendor will work together to develop a performance scorecard with conditions, milestones, requirements, or timetables that must be met before additional steps may be taken, or payment is due. The scorecard may additionally record matters related to price, service, quality and other factors deemed important.

3.4.1.4 The Vendor shall cooperate with the State in this monitoring and tracking activity, which may require that vendor report progress and problems (with proposed resolutions), provide records of its performance, allow random inspections of its facilities, participate in scheduled meetings and provide management reports as requested by the State.

3.4.1.5 The State expects to have quality vendors who are willing to work with us during the term of the contract to provide us with better quality at the same price, or to provide the same quality at a lower price. We may consider, in future procurement evaluations, a vendor that successfully provides better quality or price.

3.5 Where Services are to be Performed

The work location will be 527 East Capitol Avenue, Springfield, IL. AGENCY will provide the microfilming camera, film and work area. Further, AGENCY shall specify and verify VENDOR work schedule. If any of the work identified for performance in the United States is moved to another country, such action may be deemed a breach of the contract.

3.6 Term of Contract

3.6.1 Initial term. The initial term of the contract is scheduled to begin July 1, 2007 and conclude June 30, 2010.

3.6.2 Renewal. Except as otherwise shown, the State reserves the right to renew the Contract for the same or lesser length of term as the initial term and on the same terms and conditions.

3.6.3 Early Termination. See Section 5.8 for information regarding early termination.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

4. CONTRACT PRICING

- 4.1 Method and Rate of Compensation:** VENDOR shall only be compensated for actual work performed. As described in Items 1 and 2 in the tables below, VENDOR shall be reimbursed at the "Hourly Rate" indicated for each hour of services performed in either the Chief Clerks Office or within the Transportation Division. AGENCY reserves the right to increase or decrease the total estimated hours of work.

Fiscal Year 2008

Detailed Agency Specifications For each Service Item	Estimated Quantity During Year	Hourly Rate	Total (equals quantity X rate)
Item 1: Chief Clerk's Office, Human Resource & Financial Information Section - Prepare documents for filming by removing various bindings, clips, staples, tape, cutting of large maps, loading and unloading of microfilm camera, etc. Film documents and return filmed materials, in order, to a proper location outlined by Illinois Commerce Commission staff. Assist with the folding of documents, stuffing envelopes, etc. relating to Public Utility matters.	1056 hours	\$11.36	\$11,996
Item 2: Transportation Processing Section - Prepare documents by removing staples, tape, etc., film document, jacket the prepared film and file in proper location as outlined by Illinois Commerce Commission staff.	1100 hours	\$12.08	\$13,288
TOTAL ANNUAL COST ESTIMATE			\$25,284

Fiscal Year 2009

Detailed Agency Specifications For each Service Item	Estimated Quantity During Year	Hourly Rate	Total (equals quantity X rate)
Item 1: Chief Clerk's Office, Human Resource & Financial Information Section - Prepare documents for filming by removing various bindings, clips, staples, tape, cutting of large maps, loading and unloading of microfilm camera, etc. Film documents and return filmed materials, in order, to a proper location outlined by Illinois Commerce Commission staff. Assist with the folding of documents, stuffing envelopes, etc. relating to Public Utility matters.	1056 hours	\$12.00	\$12,672
Item 2: Transportation Processing Section - Prepare documents by removing staples, tape, etc., film document, jacket the prepared film and file in proper location as outlined by Illinois Commerce Commission staff.	1100 hours	\$12.74	\$14,014
TOTAL ANNUAL COST ESTIMATE			\$26,686

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

Fiscal Year 2010

Detailed Agency Specifications For Service Item	Estimated Quantity During Year	Hourly Rate	Total (equals quantity X rate)
Item 1: Chief Clerk's Office, Human Resource & Financial Information Section - Prepare documents for filming by removing various bindings, clips, staples, tape, cutting of large maps, loading and unloading of microfilm camera, etc. Film documents and return filmed materials, in order, to a proper location outlined by Illinois Commerce Commission staff. Assist with the folding of documents, stuffing envelopes, etc. relating to Public Utility matters.	1056 hours	\$12.65	\$13,358
Item 2: Transportation Processing Section - Prepare documents by removing staples, tape, etc., film document, jacket the prepared film and file in proper location as outlined by Illinois Commerce Commission staff.	1100 hours	\$13.42	\$14,762
TOTAL ANNUAL COST ESTIMATE			\$28,120

- 4.2 Expenses:** This contract does not allow for reimbursement of any expense incurred by Vendor, including but not limited to telephone or other communications device, postage, copying, travel, transportation, lodging, food and per diem.
- 4.3 Payment Terms and Conditions (including when paid, frequency and retainage):** VENDOR invoices shall be submitted on a monthly basis to the respective AGENCY Project Manager for approval and payment. Upon approval of invoices by the Project Manager, invoices will be submitted for prompt payment. No retainage will be withheld.
- 4.4 Tax Exemption:** The ordering Agency/Buyer's Illinois tax exemption number is **E9984-0855-04**. Federal tax exemption information is available upon request to the ordering Agency/Buyer.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

5. TERMS AND CONDITIONS

This section contains the State's standard terms and conditions for all contracts. These terms and conditions will govern this contractual relationship and the Vendor is bound by them and is responsible for reading and understanding them. The State reserves the right to amend these terms and conditions when and where needed and to supplement them with any appropriate addendum, as noted herein.

5.1 BILLING AND PAYMENT

5.1.1 BILLING: The Agency/Buyer's billing practices are set out as follows and Vendor is presumed to have read and understands the following procedures:

5.1.1.1 Vendor shall submit invoices to the address, on the schedule and with the detail required by the ordering Agency/Buyer. Invoices for equipment and/or supplies purchased and/or services performed and expenses incurred prior to July 1st must be presented to the Agency/Buyer no later than July 31; otherwise Vendor may have to seek payment of such invoices through the Illinois Court of Claims (**30 ILCS 105/25**). Billings shall be made to conform to State fiscal year requirements, including prorating if necessary, notwithstanding any contrary provision in this Contract or order.

5.1.1.2 Vendor shall not bill for any taxes unless a statement is attached to the bill identifying the tax and showing why it is legally chargeable to the State. The State does not warrant the interest component of any payment, including installment payments, are exempt from income tax liability.

5.1.1.3 By submitting an invoice Vendor certifies that the equipment, supplies and/or services provided meet all requirements of the Contract, and the amount billed and expenses incurred are as allowed in the Contract.

5.1.2 PAYMENT:

5.1.2.1 Late payment charges, if any, shall not exceed the formula established in the State "Prompt Payment" Act (**30 ILCS 540/1**) and rules (**74 Ill. Adm. Code 900**). Payments delayed at the beginning of the State's fiscal year (July and August payments) because of the appropriation process shall not be considered a breach.

5.1.2.2 The Agency/Buyer shall not be liable to pay for any equipment and/or supplies provided and/or services rendered, including related expenses subject of this Contract incurred prior to the beginning of the term of this Contract. Any Contract or order labeled "subject to financing" or words to similar effect is subject to the Agency/Buyer obtaining suitable financing.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

- 5.1.2.3** The approved invoice amount will be paid less any retainage and previous partial payments. Final payment shall be made upon determination by the Agency/Buyer that all requirements under this Contract have been completed; such determination shall not be unreasonably withheld. The final payment will be made subject to adjustment after completion of an audit of vendor's records as provided for in this Contract.
- 5.1.2.4** Any contract or order requiring payment of financing interest is subject to the interest rate limitation set by law of the greater of 9% or 125% of the G.O. Bond Index (**30 ILCS 305/1**).
- 5.1.2.5** As a condition of payment, Vendor must pay its employees prevailing wages when required by law (e.g., public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resources services, security guard and food service), and must pay its suppliers and subcontractors providing lien waivers on request (**30 ILCS 500/25-60(b)**). We have the authority to request certified payrolls. Any stipulation made by Vendor to pay prevailing wages shall be deemed to be incorporated in the project specifications as if specifically set forth therein (**820 ILCS 130/4(a)**).
- 5.1.3** **DELAY OF PAYMENT DUE TO VENDOR FAILURE:** If the Agency/Buyer in good faith determines that the Vendor has failed to perform or deliver any service or product as required by this Contract, the Vendor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the Agency/Buyer may withhold that portion of the Vendor's compensation, which represents payment for service or product that was not performed or delivered.
- 5.1.4** **SET-OFF AGAINST SUMS OWED TO THE VENDOR:** The State may set off any sum owed to the Vendor on account of any debt owed to the State, unless otherwise required by law, in accordance with the State Comptroller Act (**15 ILCS 405**). The Vendor agrees that this provision constitutes proper and timely notice under the law of setoff.
- 5.1.5** **AVAILABILITY OF APPROPRIATIONS (30 ILCS 500/20-60):** Agency/Buyer shall use its best efforts to secure sufficient appropriations to fund this CONTRACT. However, the Agency/Buyer's obligations hereunder shall cease immediately, without penalty or further payment being required, if: (a) the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation; (b) adequate funds are not appropriated or granted the Agency/Buyer by the Illinois General Assembly or the federal funding source, to allow the Agency/Buyer to operate as required and to fulfill its obligations under the Contract; or (c) funds appropriated are de-appropriated or not allocated, or if funds needed by the Agency/Buyer, at the Agency/Buyer's sole discretion, are insufficient for

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

any reason. Agency/Buyer shall give Vendor notice of insufficient funding as soon as practicable. Vendor's obligation to perform shall cease upon receipt of the notice.

5.2 VENDOR PERFORMANCE AND RESPONSIBILITIES

5.2.1 CONSULTATION: Vendor shall keep the Agency/Buyer fully informed as to the progress of matters covered by this Contract. Where time permits and Vendor is not otherwise prohibited from so doing, Vendor shall offer the Agency/Buyer the opportunity to review relevant documents prior to filing with any public body or adversarial party.

5.2.2 PERFORMANCE REVIEWS:

5.2.2.1 The State or Agency/Buyer may conduct a performance review of the Vendor's performance under the Contract. The Vendor shall cooperate with the State or Agency/Buyer in this review, which may require that the Vendor provide records of its performance and billing. Vendor shall provide any required information within 30 days of the Agency/Buyer's request. This performance review may be used by any State agency in determining whether to enter into other contractual relationships with the Vendor.

5.2.2.2 Vendor shall have and maintain, during the term of this contract, internal procedures and processes to monitor performance to ensure full compliance with the contract. Vendor shall disclose such procedures and processes to the State upon request.

5.2.2.3 At the direction of the State, Vendor and State shall work together to develop a performance scorecard to record relevant facts related to performance as well as establishing conditions, milestones, requirements or timetables that must be met before additional steps may be taken or payment is due.

5.2.3 AUDIT/RETENTION OF RECORDS (30 ILCS 500/20-65): Vendor and its subcontractors shall maintain books and records relating to performance of the Contract or subcontract and necessary to support amounts charged to the State under the Contract or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Vendor for a period of 3 years from the later of the date of final payment under the Contract or completion of the Contract, and by the subcontractor for a period of 3 years from the later of the date of final payment under the subcontract or completion of the subcontract. The 3-year period shall be extended for the duration of any audit in progress during the term. Books and records required to be maintained under this section shall be available for review or audit by representatives of the Auditor General, the Agency/Buyer, the Inspector General and other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit. Failure to maintain books and records required by this section shall establish a presumption in favor of the State for

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

the recovery of any funds paid by the State under the Contract for which adequate books and records are not available to support the purported disbursement. The Vendor shall not impose a charge for audit or examination of the Vendor's books and records. If federal funds are used to pay contract costs, the Vendor must retain its records for five years. If only state funds are involved, three years is sufficient.

5.2.4 SCHEDULE OF WORK: Any work performed on State premises shall be done during the hours designated by the State and shall in any event be performed so as to minimize inconvenience to the State and its personnel and minimize interference with the State's operations.

5.2.5 RESPONSIBILITY FOR AGENTS AND EMPLOYEES: Vendor shall be responsible for the negligent acts and omissions of its agents, employees and subcontractors in their performance of Vendor's duties under this Contract. Vendor represents that it shall utilize the services of individuals skilled in the profession for which they will be used in performing services hereunder. In the event that the Agency/Buyer determines that any individual performing services for Vendor hereunder is not providing such skilled services, it shall promptly so notify Vendor and Vendor shall replace that individual.

5.2.6 ASSIGNMENT AND DELEGATION:

5.2.6.1 This Contract may not be assigned, transferred or conveyed in whole or in part by the Vendor without the prior written consent of the State. For the purpose of construing this clause, a transfer of a controlling interest in the Vendor shall be considered an assignment.

5.2.6.2 After notice, the Agency/Buyer may transfer the Contract or payment responsibility to another State Agency, or assign the Contract to a third-party for financing purposes.

5.2.7 USE OF THIRD PARTIES:

5.2.7.1 The Agency/Buyer acknowledges that the Vendor may contract with third parties for the performance of any of the Vendor's obligations under this Contract. However, all subcontracts shall be subject to prior approval by the Agency/Buyer, so the Vendor must obtain the Agency/Buyer's prior written consent before allowing any Third Party to perform any of the Vendor's obligations under this Contract.

5.2.7.2 A Vendor who obtains the Agency/Buyer's prior written consent and subsequently enters into a contract with a Third Party for performance of any of the Vendor's obligations under this Contract remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Vendor under this Contract shall also apply fully and completely to subcontractors. This includes requiring all subcontractors to submit certifications and disclosures to Agency/Buyer for

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

review and approval upon request. The Agency/Buyer shall have the right to request the removal of a subcontractor from the Contract for good cause.

5.2.7.3 Vendor shall identify in an addendum to this Contract, the names and addresses of all subcontractors utilized by Vendor in the performance of this Contract, together with the anticipated amount of money that each subcontractor is expected to receive pursuant to this Contract. The State may request updated information at any time. For purposes of this section, subcontractors are those specifically hired to perform all or part of the work of this contract or to provide the supplies requested by the State.

5.2.7.4 If Vendor is unable to secure or maintain key personnel named in the Contract to render the services, Vendor shall not be relieved of its obligations to complete performance. Agency/Buyer shall have the option to accept a substitute or to terminate the Contract.

5.2.8 LICENSE: Vendor, directly or through its employees, shall have and maintain any required license. With written consent of the Agency/Buyer, Vendor may meet the license requirement through a subcontractor.

5.2.9 SOLICITATION AND EMPLOYMENT: Vendor shall not employ any person employed by the Agency/Buyer during the term of this Contract to perform any work required by the terms of this Contract. As a condition of this Contract, the Vendor shall give notice immediately to the Agency/Buyer's director if Vendor solicits or intends to solicit for employment any of the Agency/Buyer's employees during the term of this Contract. Agency/Buyer has no authority to contractually refuse to hire Vendor's employees who apply to the State for employment.

5.2.10 FORCE MAJEURE: Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, labor or material shortages, labor disputes, fire, flood, explosion, legislation, and governmental regulation.

5.2.11 TAX COMPLIANCE: Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.

5.2.12 COMPLIANCE WITH THE LAW: The Vendor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Vendor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

5.2.13 ANTITRUST ASSIGNMENT: Vendor hereby assigns, sells and transfers to the State of Illinois all right, title and interest in and to any claims and causes of action arising under antitrust laws of Illinois or the United States relating to the subject matter of the Contract.

5.3 CONFIDENTIALITY AND WORK PRODUCT

5.3.1 CONFIDENTIALITY: Vendor's employees, agents and subcontractors may have access to confidential data maintained by the Agency/Buyer to the extent necessary to carry out its responsibilities under the Contract. As such, the following applies unless agreed to otherwise in writing:

5.3.1.1 Vendor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Agency/Buyer;

5.3.1.2 Vendor shall provide to the Agency/Buyer a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

5.3.1.3 Vendor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Vendor in connection with the performance of the Contract;

5.3.1.4 Vendor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract;

5.3.1.5 The private or confidential data shall remain the property of the Agency/Buyer at all times.

5.3.2 CONFIDENTIAL INFORMATION MAY NOT BE DISSEMINATED: No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Agency/Buyer, either during the period of the Contract or thereafter. Any data supplied to or created by the Vendor shall be considered the property of the Agency/Buyer. The Vendor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Agency/Buyer.

5.3.3 SUBPOENA: In the event that a subpoena or other legal process is served upon the Vendor for records containing confidential information, the Vendor shall promptly notify the Agency/Buyer and cooperate with the Agency/Buyer in any lawful effort to protect the confidential information.

5.3.4 REPORTING UNAUTHORIZED DISCLOSURES: The Vendor shall immediately report to the Agency/Buyer any unauthorized disclosure of confidential information.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

5.3.5 USE OF WORK PRODUCT: Unless otherwise agreed in writing, the following applies regarding work product created or produced under this Contract:

5.3.5.1 Work product produced under this Contract, including, but not limited to, documents, reports, information, documentation of any sort and ideas, whether preliminary or final, shall become and remain the property of the State and/or Agency/Buyer, including any patent, copyright or other intellectual property rights;

5.3.5.2 With the exception of ideas, all such work products shall be considered works made for hire within the meaning of 17 U.S.C. § 101;

5.3.5.3 To the extent that any portion of such work product is not a work made for hire, Vendor completely and without reservation assigns to the Agency/Buyer all right, title and interest in and to such portion of the work product, as well as all related intellectual property rights, including patent and copyright;

5.3.5.4 Agency/Buyer shall exercise all rights of ownership in all such work product without restriction or limitation, without further compensation to Vendor.

5.3.5.5 Vendor shall not acquire or have any right to use, disclose or reproduce the work product or any equipment, documents, information, media, software, or know-how obtained from the State except to perform this Contract. Nothing herein shall be construed as precluding the use of any information independently acquired by Vendor without such limitation;

5.3.5.6 The ideas, methodologies, processes, inventions and tools (including computer hardware and software where applicable) that Vendor previously developed and brings to the Agency/Buyer in furtherance of performance of the Contract shall remain the property of the Vendor; and

5.3.5.7 Vendor grants to the Agency/Buyer a nonexclusive license to use and employ such software, ideas, concepts, methodologies, processes, inventions and tools solely within its enterprise.

5.3.6 SURVIVES TERMINATION: Vendor's obligations regarding Confidential Information and Work Product Usage under this Contract shall survive termination of this Contract.

5.4 INDEMNIFICATION AND LIABILITY

5.4.1 BY THE VENDOR: The Vendor agrees to indemnify and hold harmless the State of Illinois and the Agency/Buyer, its officers, employees and agents (appointed and elected) and volunteers from any and all costs,

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Illinois or the Agency/Buyer, related to or arising from:

- 5.4.1.1 Any breach of this Contract;
- 5.4.1.2 Any negligent, intentional or wrongful act or omission of the Vendor or any agent or subcontractor utilized or employed by the Vendor;
- 5.4.1.3 The Vendor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Vendor;
- 5.4.1.4 Any failure by the Vendor to fulfill the Compliance with the Law provision of this Contract;
- 5.4.1.5 Any failure by the Vendor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Illinois;
- 5.4.1.6 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
- 5.4.1.7 Any failure by the Vendor to adhere to the confidentiality provisions of this Contract.

5.4.2 SURVIVES TERMINATION: Indemnification obligation of the parties shall survive termination of this Contract.

5.4.3 LIABILITY: Vendor agrees to assume, without limitation, all risk of loss and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, relating to bodily injuries to persons (including death) and for loss of, damage to, or destruction of real and/or tangible personal property (including property of the State) resulting from the negligence or misconduct of Vendor, its employees, agents, or subcontractors in the performance of the Contract. Vendor shall assume risk of loss until delivery to the Agency/Buyer's facility. Vendor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction, or damage to State property, and shall at the State's request and expense, furnish to the State reasonable assistance and cooperation, including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the State in obtaining recovery. Neither party shall be liable for incidental, special or consequential damages.

5.4.4 LEGISLATIVE CHANGES: The Vendor herein expressly acknowledges that the Contract and its subject matter are subject to legislative change by either the federal or state government. Should either legislative body

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

enact measures which alter the terms or subject matter of this Contract, the Vendor shall not hold the Agency/Buyer liable in any manner for the resulting changes. The Agency/Buyer shall use best efforts to provide thirty (30) days' written notice to the Vendor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Agency/Buyer's right to terminate the Contract pursuant to the termination provisions.

5.4.5 JOINT AND SEVERAL LIABILITY: If the Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

5.5 WARRANTIES

5.5.1 CONSTRUCTION OF WARRANTIES EXPRESSED IN THE CONTRACT WITH WARRANTIES IMPLIED BY LAW:

All warranties made by the Vendor in all provisions of this Contract, whether or not this Contract specifically denominates the Vendor's promise as a warranty or whether the warranty is created only by the Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Agency/Buyer, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor. The provisions of this section apply during the term of this Contract and any extensions or renewals thereof.

5.5.2 CONCEPTS, MATERIALS AND WORKS PRODUCED: Vendor represents and warrants that all the concepts, materials and works produced, or provided to the Agency/Buyer pursuant to the terms of this Contract shall be wholly original with the Vendor or that the Vendor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Vendor represents and warrants that the concepts, materials and works and the Agency/Buyer's use of same and the exercise by the Agency/Buyer of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contract to the Vendor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Vendor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Vendor and any other materials, works and

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

methodologies used in connection with providing the services contemplated by this Contract

- 5.5.3 TO BE PROVIDED IN A PROFESSIONAL MANNER:** Vendor warrants that all services will be performed in a good and professional manner and that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.
- 5.5.4 CONFORMITY WITH CONTRACTUAL REQUIREMENTS:** The Vendor represents and warrants that the goods or services will appear and operate in conformance with the terms and conditions of this Contract.
- 5.5.5 AUTHORITY TO ENTER INTO CONTRACT:** The Vendor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Agency/Buyer.
- 5.5.6 OBLIGATIONS OWED TO THIRD PARTIES:** The Vendor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Contract are or will be fully satisfied by the Vendor so that the Agency/Buyer will not have any obligations with respect thereto.
- 5.5.7 TITLE TO PROPERTY AND EQUIPMENT:** The Vendor represents and warrants that title to any property assigned, conveyed or licensed to the Agency/Buyer is good and that transfer of title or license to the Agency/Buyer is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Vendor further warrants that it has title to, or the right to allow the State to use, the equipment, supplies and/or services being provided and that the State may use same without suit, trouble or hindrance from Vendor or third parties.
- 5.5.8 EQUIPMENT AND SUPPLIES QUALITY:** Unless otherwise agreed, Vendor warrants that all equipment and/or supplies shall be new, unused, of most current manufacture and not discontinued, shall be free of defects in materials and workmanship, shall be provided in accordance with manufacturer's standard warranty and shall perform in accordance with manufacturer's published specifications.
- 5.5.9 INDUSTRY STANDARDS:** The Vendor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the standards in the relevant industry in the performance of this Contract.
- 5.5.10 TECHNOLOGY UPDATES:** The Vendor represents warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.
- 5.5.11 SOLICITATION:** The Vendor warrants that no person or selling Agency/Buyer has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission,

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

5.6 INSURANCE

5.6.1 INSURANCE: Vendor shall maintain public liability, casualty and auto insurance in sufficient amount to protect the State from liability for acts of Vendor and risks and indemnities assumed by Vendor. If Vendor does not have minimum coverage (for bodily injury of \$250,000 per person/\$500,000 per occurrence, and for property damage, \$100,000 per occurrence) Vendor must inform the Agency/Buyer and seek written permission for lesser coverage. Vendor shall carry Worker's Compensation Insurance in amount required by law. Upon request, Vendor shall provide and maintain any bond required by law or the Agency/Buyer. Vendor shall provide copies of certificates of insurance evidencing the coverage described in this paragraph.

5.7 VENDOR STATUS AND QUALIFICATIONS

5.7.1 BACKGROUND CHECK: The State may conduct criminal and driver history background checks of Vendor's officers, employees or agents who would directly supervise or physically perform any of the Contract requirements at State facilities. Any officer, employee or agent deemed unsuitable by the State must be replaced immediately.

5.7.2 LEGAL ABILITY TO CONTRACT: Vendor certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

5.7.2.1 Vendor, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.

5.7.2.2 Vendor is not in default on an educational loan (**5 ILCS 385/3**).

5.7.2.3 Vendor has informed the director of the Agency/Buyer in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, **40 ILCS 5/14-108.3** and **40 ILCS 5/16-133.3**, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive in or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, **40 ILCS 5/14-108.3** and **40 ILCS 5/16-133.3**, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items (**30 ILCS 105/15a**).

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

- 5.7.2.4** Vendor has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has made an admission on the record of having so bribed or attempted to bribe **(30 ILCS 500/50-5)**.
- 5.7.2.5** If Vendor has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business **(30 ILCS 500/50-10)**.
- 5.7.2.6** If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least 5 years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the contracting State Agency/Buyer shall declare the contract void if this certification is false **(30 ILCS 500/50-10.5)**.
- 5.7.2.7** Vendor and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the contracting State Agency/Buyer may declare the contract void if this certification is false **(30 ILCS 500/50-11)** or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt **(30 ILCS 500/50-60)**.
- 5.7.2.8** Vendor and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act **(30 ILCS 500/50-12)** and acknowledge that failure to comply can result in the contract being declared void.
- 5.7.2.9** Vendor certifies that it has not committed a willful or knowing violation of the Environmental Protection Act (relating to Civil Penalties under the Environmental Protection Act) within the last five (5) years, and is therefore not barred from being awarded a contract. If the State later determines that this certification was falsely made by the Vendor, the Vendor acknowledges that the contracting State Agency/Buyer may declare the contract void. **(30 ILCS 500/50-14)**
- 5.7.2.10** Vendor has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has Vendor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract **(30 ILCS 500/50-25)**.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

- 5.7.2.11** Vendor is not in violation of the "Revolving Door" section of the Illinois Procurement Code (**30 ILCS 500/50-30**).
- 5.7.2.12** Vendor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers or employees of the State (**30 ILCS 500/50-40, 50-45, 50-50**).
- 5.7.2.13** Vendor will, pursuant to the Drug Free Workplace Act, provide a drug free workplace, and if an individual shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the Contract. This certification applies to contracts of \$5000 or more with: individuals; and to entities with twenty-five (25) or more employees (**30 ILCS 580**).
- 5.7.2.14** Neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed \$10,000 (**30 ILCS 582**).
- 5.7.2.15** Vendor has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any State or of the United States (**720 ILCS 5/33E-3, 5/33E-4**).
- 5.7.2.16** Vendor complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (**775 ILCS 5/2-105**).
- 5.7.2.17** Vendor does not pay dues to, or reimburse or subsidize payments by its employees for, any dues or fees to any "discriminatory club" (**775 ILCS 25/2**).
- 5.7.2.18** Vendor complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction (**30 ILCS 583**).
- 5.7.2.19** Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12 (**30 ILCS 584**).
- 5.7.2.20** Vendor certifies that it is not in violation of Section 50-14.5 of the Illinois Procurement Code that states: "Owners of residential buildings who have committed a willful or knowing

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

violation of the Lead Poisoning Prevention Act (**410 ILCS 45**) are prohibited from doing business with the State of Illinois or any State agency until the violation is mitigated".

5.7.2.21 In accordance with the Steel Products Procurement Act, steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring agency grants an exception (**30 ILCS 565**).

5.7.2.22 Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments, if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity (**EO No. 1 (2007)**).

5.7.3 CONFLICTS OF INTEREST: Vendor has disclosed, and agrees it is under a continuing obligation to disclose to the Agency/Buyer, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit Vendor from having or continuing the Contract. This includes, but is not limited to conflicts under the "Infrastructure Task Force Fee Prohibition" section of the State Finance Act (**30 ILCS 105/8.40**), Article 50 of the Illinois Procurement Code (**30 ILCS 500/50**), or those which may conflict in any manner with the Vendor's obligation under this Contract. Vendor shall not employ any person with a conflict to perform under this Contract. If any conflict under Section 50-13 exists no contract may be issued without an exemption from the Governor pursuant to Section 50-20 of the Illinois Procurement Code. An exemption is necessary if:

5.7.3.1 the person intending to contract with the State, their spouse or child: (i) holds an elective office in Illinois; (ii) holds a seat in the Illinois General Assembly; (iii) is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for such employment in excess of 60% of the salary of the Governor (**currently \$90,414.60**). (The conflict of interest threshold of 60% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders, legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.);

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

5.7.3.2 the contract is with a firm, partnership, association or corporation in which a person referenced in item 5.7.3.1 above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor (**currently \$150,691.00**).

5.7.3.3 the contract is with a firm, partnership, association or corporation in which a person referenced in item 5.7.3.1 above, together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor (**currently \$301,382.00**) from the firm, partnership, association or corporation.

5.7.4 INDEPENDENT CONTRACTOR: The Vendor shall be an independent contractor. Equipment and/or supplies provided and/or services performed pursuant to this Contract are not rendered as an employee of the Agency/Buyer or of the State of Illinois. Amounts paid pursuant to this Contract do not constitute compensation paid to an employee.

5.7.5 NOT A JOINT VENTURE: Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

5.7.6 NON-DISCRIMINATION: In compliance with the State and Federal Constitutions, the Illinois Human Rights Act, the U. S. Civil Rights Act, and Section 504 of the Federal Rehabilitation Act, the Agency/Buyer does not unlawfully discriminate in employment, contracts, or any other activity.

5.8 TERMINATION OF CONTRACT

5.8.1 TERMINATION FOR CAUSE WITHOUT ADVANCE NOTICE: The Agency/Buyer may terminate this Contract for any of the following reasons effective immediately without advance notice:

5.8.1.1 In the event the Vendor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

5.8.1.2 The Agency/Buyer determines that the actions, or failure to act, of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause jeopardy to health or safety;

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

5.8.1.3 The Vendor fails to comply with confidentiality laws or provisions;

5.8.1.4 The Vendor furnished any statement, representation or certification in connection with this Contract which is materially false, deceptive, incorrect or incomplete.

5.8.2 TERMINATION FOR CAUSE WITH NOTICE: The occurrence of or any one or more of the following events shall constitute cause for the Agency/Buyer to declare the Vendor in default of its obligations under this Contract:

5.8.2.1 The Vendor fails to perform, to the Agency/Buyer's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Vendor;

5.8.2.2 The Agency/Buyer determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

5.8.2.3 The Vendor fails to make substantial and timely progress toward performance of the Contract;

5.8.2.4 The Vendor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Vendor terminates or suspends its business; or the Agency/Buyer reasonably believes that the Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

5.8.2.5 The Vendor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;

5.8.2.6 The Vendor has engaged in conduct that has or may expose the Agency/Buyer to liability, as determined in the Agency/Buyer's sole discretion; or

5.8.2.7 The Vendor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right.

5.8.2.8 If there is a default event caused by the Vendor, the Agency/Buyer shall provide written notice to the Vendor requesting that the breach or noncompliance be remedied within the period of time specified in the Agency/Buyer's written notice to the Vendor. If the breach or noncompliance is not remedied by the date of the written notice, the Agency/Buyer may either: (a) immediately terminate the Contract without additional written notice; or,

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

(b) enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

5.8.3 TERMINATION FOR CONVENIENCE UPON NOTICE: Following **fifteen (15)** days written notice, the Agency/Buyer may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Vendor. Following termination upon notice, the Vendor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Agency/Buyer up to and including the date of termination.

5.8.4 TERMINATION DUE TO LACK OF FUNDS OR CHANGE IN LAW: The Agency/Buyer shall have the right to terminate this Contract without penalty by giving written notice to the Vendor as a result of any of the following:

5.8.4.1 Adequate funds are not appropriated or granted to allow the Agency/Buyer to operate as required and to fulfill its obligations under this Contract;

5.8.4.2 Funds are de-appropriated or not allocated or if funds needed by the Agency/Buyer, at the Agency/Buyer's sole discretion, are insufficient for any reason;

5.8.4.3 The Agency/Buyer's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency/Buyer;

5.8.4.4 The Agency/Buyer's duties are substantially modified.

5.8.5 VENDOR'S REMEDIES IN EVENT OF TERMINATION BY AGENCY/BUYER: In the event of termination of this Contract for any reason by the Agency/Buyer, the Agency/Buyer shall pay only those amounts, if any, due and owing to the Vendor for services actually rendered up to and including the date of termination of the Contract and for which the Agency/Buyer is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Vendor's claim. This provision in no way limits the remedies available to the Agency/Buyer under this Contract in the event of termination. However, the Agency/Buyer shall not be liable for any of the following costs:

5.8.5.1 The payment of unemployment compensation to the Vendor's employees;

5.8.5.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

5.8.5.3 Any costs incurred by the Vendor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

5.8.5.4 Any taxes that may be owed by the Vendor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

5.8.6 VENDOR'S TERMINATION DUTIES: The Vendor, upon receipt of notice of termination or upon request of the Agency/Buyer, shall:

5.8.6.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, any other matters the Agency/Buyer may require;

5.8.6.2 Immediately cease using and return to the Agency/Buyer any personal property or materials, whether tangible or intangible, provided by the Agency/Buyer to the Vendor;

5.8.6.3 Comply with the Agency/Buyer's instructions for the timely transfer of any active files and work product produced by the Vendor under this Contract;

5.8.6.4 Cooperate in good faith with the Agency/Buyer, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and

5.8.6.5 Immediately return to the Agency/Buyer any payments made by the Agency/Buyer for services that were not rendered by the Vendor.

5.9 GENERAL PROVISIONS

5.9.1 TERM AND RENEWALS: The length of the Contract, including any renewals, may not exceed that allowed by law pursuant to **30 ILCS 500/20-60** or other applicable statutes. When the term begins on execution, that means the date of final execution by the State. If the commencement of performance is delayed because the Contract is not executed by the State on the start date, the State may change the start date, end date and milestones to reflect the delayed execution. No renewal may be effective automatically. No renewal may be effective solely at the Vendor's option.

5.9.2 NON-EXCLUSIVE RIGHTS: This Contract is not exclusive. The Agency/Buyer reserves the right to select other contractors to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.

5.9.3 APPLICABLE LAW: The terms and conditions of this Contract, including those set forth in any attachment, shall be construed in accordance with and are subject to the laws and rules of the State of Illinois, including, without limitation, the Illinois Procurement Code (**30 ILCS 500**) and the rules promulgated thereunder (**44 Ill. Adm. Code 1**), the Illinois Freedom of

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

Information Act (**5 ILCS 140**) and the Attorney General Act (**15 ILCS 205**). The Department of Human Rights' Equal Opportunity requirements (**44 Ill. Admin Code 750**) are incorporated by reference. Any claim against the State arising out of this Contract must be filed exclusively with the Illinois Court of Claims (**705 ILCS 505/1**). The State shall not enter into binding arbitration to resolve any Contract dispute. The State of Illinois does not waive sovereign immunity by entering into this Contract. Any provision containing a citation to an Illinois statute (cited ILCS) may not contain complete statutory language. The official text, which is incorporated by reference, can be found in the appropriate chapter and section of the Illinois Compiled Statutes. An unofficial version can be viewed at <http://www.ilga.gov/legislation/ilcs/ilcs.asp>.

- 5.9.4 ENTIRE CONTRACT:** This Contract, including any attachments or amendments, constitutes the entire agreement between the Parties concerning the subject matter of the Contract. Modifications and waivers must be in writing and signed by authorized representatives of the Parties. Any provision of this Contract officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions of this Contract shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive termination of this Contract, including without limitation provisions relating to confidentiality, warranty, ownership and liability. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.
- 5.9.5 CONTRACTING AUTHORITY:** Certain contracts must be signed or approved by the Director of the Department of Central Management Services (CMS) before they are binding on the State. In those instances CMS shall not be responsible for costs or funding even though payments may be made through CMS facilities.
- 5.9.6 AMENDMENTS:** This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.
- 5.9.7 THIRD PARTY BENEFICIARIES:** There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the Agency/Buyer and the Vendor.
- 5.9.8 HEADINGS OR CAPTIONS:** The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.
- 5.9.9 SUPERSEDES FORMER CONTRACT AGREEMENTS:** This Contract supersedes all prior Contracts or Agreements between the Agency/Buyer and the Vendor for the services provided in connection with this Contract.
- 5.9.10 WAIVER:** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency/Buyer and the Vendor, failure by either party at any time to require performance by the other party or to

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

- 5.9.11 NOTICE:** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth in Section 1 of the Contract, "Agency/Buyer and Vendor Contact Page." Notices by fax must show the date/time of successful receipt. Each such notice shall be deemed to have been provided: (a) at the time it is actually received; or, (b) within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or, (c) within five (5) days after it is deposited the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.
- 5.9.12 CUMULATIVE RIGHTS:** The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- 5.9.13 SEVERABILITY:** If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.
- 5.9.14 TIME IS OF THE ESSENCE:** Time is of the essence with respect to the performance of the terms of this Contract.
- 5.9.15 AUTHORIZATION:** Each party to this Contract represents and warrants to the other parties that: (a) it has the right, power and authority to enter into and perform its Obligations under this Contract; and (b) it has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 5.9.16 SUCCESSORS IN INTEREST:** All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
- 5.9.17 OBLIGATIONS BEYOND CONTRACT TERM:** This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

Agency/Buyer and the Vendor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

5.9.18 COUNTERPARTS: The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

5.9.19 FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS: The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

5.9.20 ADDITIONAL PROVISIONS: The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

6. AGENCY/BUYER SUPPLEMENTAL TERMS AND CONDITIONS

The following supplemental terms and conditions, if checked, are attached and are applicable to this contract:

- ☐ Public Works Requirements (**820 ILCS 130/4**) *
- ☐ Prevailing Wage (janitorial cleaning, window cleaning, building and grounds, site technician, natural resources, food services, and security services, if valued at more than \$200 per month or \$2000 per year. (**30 ILCS 500/25-60**) *
- ☐ Prevailing Wage (all printing contracts) (**30 ILCS 500/25-60**). *
- ☐ Prohibition of Contingent Fees (certain federally funded contracts)
- ☐ Other (describe)

*Information regarding prevailing wage, benefit and working condition requirements may be obtained from the Illinois Department of Labor (217-782-6206) and information may be viewed at their website (www.state.il.us/agency/idol). You must check with IDOL before submitting your offer to determine the prevailing wages, benefits and working conditions applicable to this solicitation.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

7. STATE FORMS REQUIRED OF THE VENDOR

The State Forms completed by the Vendor, as part of its Bid for this project, are attached at the end of this Contract and are hereby incorporated as part of the Contract.

STATE OF ILLINOIS
CONTRACT FOR PURCHASE OF SERVICES

8. SIGNATURE PAGE: CONTRACT FOR PURCHASE OF SERVICES

This contract ("Contract") is made and entered into by and between the State of Illinois, a body politic ("State") by and through its agency and/or buyer, the Illinois Commerce Commission ("Agency" "Buyer" or "Agency/Buyer") and UCP Land of Lincoln.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the foregoing and to the terms set forth herein.

In Witness whereof, Agency/Buyer and Vendor have caused this CONTRACT to be executed by duly authorized representatives of the respective PARTIES on the dates shown below:

UCP Land of Lincoln

Char Fanning
Signature

Char Fanning
Printed Name

Title: Chief Financial Officer Date: 6-4-07

Illinois Commerce Commission

Tim Anderson
Signature

Tim Anderson
Printed Name

Title: Executive Director Date: 6/12/07

Mary Stephenson
Signature

Mary Stephenson
Printed Name

Title: General Counsel Date: 6/12/07

Ken E. Hundrieser
Signature

Ken Hundrieser
Printed Name

Title: State Purchasing Officer Date: 06/07/07